



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/811,702	03/19/2001	Matthew Waight	D02542	8838
43471	7590	07/14/2006	EXAMINER	
GENERAL INSTRUMENT CORPORATION DBA THE CONNECTED HOME SOLUTIONS BUSINESS OF MOTOROLA, INC. 101 TOURNAMENT DRIVE HORSHAM, PA 19044			SHANG, ANNAN Q	
			ART UNIT	PAPER NUMBER
			2623	

DATE MAILED: 07/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 09/811,702	Applicant(s) WAIGHT ET AL.	
	Examiner Annan Q. Shang	Art Unit 2623	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

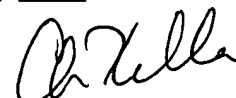
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.



CHRIS KELLEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2000
Part of Paper No. 20060707

Continuation of 11. does NOT place the application in condition for allowance because: With respect to claims 1, 4, 5, 8, 9, 12 and 13 rejected under 103(a) as being unpatentable over McMullan Jr. (5,251,324) in view of Jung (6,678,893) quotes MPEP as to obviousness and states that the 103(a) rejection does not disclose or suggest all the claimed limitations of independent claims 1, 5 and 9 and further discusses the disclosure of McMullan Jr., and Jung (see pages 2-6 of applicant's Remarks).

In response, Examiner disagrees. Examiner notes applicant's arguments, however, the test for obviousness is not whether the features of a secondary reference may be bodily incorporate into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. Applicant's arguments are directed against the references individually and one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. In this instant McMullan discloses a CATV modulator and demodulator or cable modem with microprocessor 504 or the claimed "MAC chip..." amplifier 509 or the claimed "upstream amplifier and anti-babble control 513 or the claimed "complex programmable logic device (CPLD)..." for powering on/off the amplifier (col.11, lines 58-63, col.13, lines 14-41, col.15, lines 54-63). McMullan is silent to stabilizing the upstream amplifier. However, this deficiency in McMullan is disclosed in Jung, which discloses in the same field of endeavor, a cable modem which includes a pilot signal generator 610 and an amplifier 612, where an amplifier control signal is generated to stabilized the upstream amplifier (col.4, lines 19-60 and col.5, lines 8-13). Hence, applicant's arguments are not persuasive, the rejection is not based on an attempt to recreate applicant's invention using improper hindsight, the office action is proper, meets all the claimed limitations and maintained.